IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

OP.No. 25698 of 2000(H)

PETITIONER:

SHRI.M.SAYED, UTILITY HAND GRADE I,
SPORTS UNIT, KADAMATH ISLAND, UT OF LAKSHADWEEP
RESIDING AT MANDUMMEL HOUSE, AMINI ISLAND,
U.T. OF LAKSHADWEEP.

BY ADV. SRI.N.NAGARESH

RESPONDENTS:
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1. THE ADMINISTRATOR & CHAIRMAN,
SOCIETY FOR PROMOTION OF RECREATIONAL
TOURISM AND SPORTS (SPORTS), KAVARATTI,
UT OF LAKSHADWEEP.

2. THE ASSISTANT GENERAL MANGER, SPORTS,
KADAMATH ISLAND, UT OF LAKSHADWEEP.

3. C.N.KASMI KOYA, EDUCATIONAL OFFICER &
ENQUIRY OFFICER, DEPARTMENT OF EDUCATION,
NORTH ZONE EDUCATION OFFICE, KADAMATH,
UT OF LAKSHADWEEP.

4. THE OFFICER IN CHARGE, SPORTS UNIT,
KADAMATH, U.T. OF LAKSHADWEEP.

BY ADV. SRI.P.R.RAMACHANDRA MENON

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON 23/08/2007 DELIVERED THE FOLLOWING:

ORDER ON CMP NO.43309 OF 2000 IN OP NO.25698 OF 2000 H

//DISMISSED//

23.08.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: PHOTOSTAT COPY OF THE ORDER F.NO.02/01/95-SPORTS DATED 30.1.95 ISSUED FOR THE 1ST RESPONDENT.

EXT.P2: PHOTOSTAT COPY OF THE REPRESENTATION DATED 22.12.97 SUBMITTED BEFORE THE GENERAL MANAGER, SPORTS.

EXT.P3: PHOTOSTAT COPY OF THE LETTER F.NO.10/1/99-EO (NZ) DATED 17.3.99 ISSUED BY THE 3RD RESPONDENT.

EXT.P4: PHOTOSTAT COPY OF THE STATEMENT DATED 18.3.99 GIVEN BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P5: PHOTOSTAT COPY OF THE APPEAL DATED 3.6.99 SUBMITTED BEFORE THE 1ST RESPONDENT.

EXT.P6: PHOTOSTAT COPY OF THE JUDGMENT DATED 16.6.99 IN ORIGINAL PETITION 14467/99 OF THIS HON'BLE COURT.

EXT.P7: PHOTOSTAT COPY OF THE ORDER F.NO.1/41/90-SPORTS DATED 28.5.99 ISSUED BY THE 1ST RESPONDENT.

EXT.P8: PHOTOSTAT COPY OF THE ORDER F.NO.1/41/90-SPORTS DATED 20.8.99 ISSUED BY THE 1ST RESPONDENT.

EXT.P9: PHOTOSTAT COPY OF THE REVIEW PETITION DATED 1.11.99 SUBMITTED BEFORE THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R1: TRUE COPY OF THE ORDER F.NO.2/1/95-SPORTS DTD 30.1.95 ISSUED BY THE MANAGER (FINANCE & ACCOUNTS) FOR the GENERAL MANAGER, SPORTS.

EXT.R2: TRUE COPY OF THE REPORT BEARING F.NO.1/29/96-97-SPORTS(KAT) DTD 25.2.97 SENT BY THE AGM, SPORTS, KADMAT TO THE GENERAL MANAGER, SPORTS, KAVARATTI.

EXT.R3: TRUE COPY OF THE O.M. BEARING F.NO.1/29/96-97-SPORTS(HQ) DTD 21.2.97 ISSUED BY THE AGM (SPORTS) KADAMAT.

EXT.R4: TRUE COPY OF THE LETTER DTD.24.2.97 SENT BY THE PETITIONER TO THE AGM, SPORTS, KADAMAT ALSO BEARING THE ENDORSEMENT DTD 25.2.97 OF THE AGM SPORTS, KADAMAT.

EXT.R5: TRUE COPY OF THE FAX MESSAGE DTD 10.12.97 FROM AGM, SPORTS, KADAMAT TO THE DGM (O&A) SPORTS, KAVARATTI.

EXT.R6: TRUE COPY OF THE ORDER F.NO.1/41/90-SPORTS DTD 19.1.98 OF THE DGM (O&A) SPORTS, REGULARISING THE PERIOD OF ABSENCE OF THE PETITIONER FROM 9.1.97 TO 11.2.97.

EXT.R7: TRUE COPY OF THE COMPLAINT DTD 23.2.97 SUBMITTED BY ONE SMT.SHAHEEN HOSENALLY BEFORE THE DGM-SPORTS (O&A), KAVARATTI.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.25698 OF 2000

Dated this the 23rd day of August, 2007

JUDGMENT

Petitioner challenges Ext.P4 terminating him from service and Ext.P8 appellate order, confirming the same.

2. Petitioner entered the service of the Society for Promotion of Recreational Tourism and Sports, Union Territory of Lakshadweep, hereinafter referred to by its short name 'SPORTS' as Chowkidar and later on, as Utility Hand Grade II.

3. While working as Utility Hand, the petitioner was asked to appear before the third respondent who was appointed as an enquiry officer in proceedings based on an allegation against him. Petitioner appeared and submitted his version in writing. His oral statement was also recorded. The enquiry officer also recorded the statements of other persons. The enquiry officer concluded in the preliminary enquiry that the alleged incident is in the realm of possibility. That led to the impugned Ext.P7,

terminating the petitioner from service. Pursuant to directions of this Court, issued as per Ext.P6, Ext.P8 order has been issued. Exts.P7 and P8 have been issued by the same authority, though Ext.P6 judgment was issued by this Court on the premise that what was pending before the official respondents was an appeal.

4. I have perused the entire file as placed before me by the standing counsel.

5. In the nature of the directions that are being issued hereunder and having regard to the allegation against the petitioner, I do not deem it necessary or appropriate to mention the entire facts or to refer to the statements available in the records. Suffice it is to note that SPORTS is a Society constituted with the administrator of UT of Lakshadweep as its Chairman, and its reputation depends upon various factors, including the manner in which the guests arriving for water sports are treated. The allegation against the petitioner relates to alleged misbehaviour to a lady tourist while she came to the

cafeteria after diving. There is a written complaint on record, given by that foreign tourist with a request to defer action on the basis of that complaint till she leaves the station. The version of the diving instructor is also recorded.

6. The allegation of the petitioner is two fold. Firstly, he contends that the action is the result of personal animosity of Mr.Cheria Koya, the AGM on account of the acquisition of some land of the petitioner's family. His second contention is that there was no proper enquiry and his version about the incident ought to have been accepted.

7. Going by the records, the presence of the tourist in question in SPORTS premises at the relevant time is not disputed. According to the petitioner, that tourist had thanked him for tea and biscuits even after the alleged incident and he had gone to her room the next day for cleaning it. He has no case that she had any animosity or ill will to him. The diving instructor, whose statement is also recorded, is not attributed

with malice or animosity. It is also not disputed that an incident, where the petitioner and the tourist ended in a physical contact, had occurred though the petitioner has his version of the incident. The respondents had, through the counter affidavit, demonstrated not only that the petitioner has a track record of inefficiency but also that Sri.Cheriya Koya had helped him out in such situation. I also wonder as to how Cheria Koya could develop animosity on account of the acquisition of the land of the petitioner's family. That is an allegation without any merit or basis, particularly when Ext.P2, though produced by pleading that it is about the personal vengeance of Sri.Cheriya Koya, that document does not contain any such allegation. For the aforesaid reasons, the allegation that the impugned action is the result of Sri.Cheriya Koya's animosity is unfounded. It is, therefore, rejected.

8. On to the facts, Ext.II in the enquiry report is the complaint stated to have been made by the tourist. She has stated therein that at tea time on 20.2.1999, she was caught off guard by

Mr.Syed (petitioner) and the incident has been described to Mr.Cherry (may be Mr.Cheiya Koya) and requested that it should be raised only after her departure. Parinita, the diving instructor's statement corroborates the complaint. The petitioner has no complaint that Parinita has any hostile animosity to him. Even ignoring Ext.P3 statement of Cheria Koya, the materials on record contrasted with the defence version of the petitioner, including those in his Ext.P4 statement, do not exclude the conclusions arrived at in the enquiry report holding that, on the basis of the facts collected, the evidence adduced, of inspection of incident site and spot, of the reasons given in the enquiry report and applying the principle of preponderance of probability, the alleged incident is in the realm of possibility.

9. The question that now arises is as to whether on the face of the contention of the respondents that the institution in question is not a department in Government and that the statutory rules do not apply, is the procedure adopted by the respondents,

sufficient to sustain the impugned action. I may at once notice that it will not be in the interest of any victim of such a situation to subject her to the ordeal of remaining in India to be present as a witness in an enquiry proceedings. It is also within the permissible limits of administrative law that certain instances are treated as warranting action even without any enquiry. If such a course is adopted, the question of quality of enquiry would go into oblivion. But in the case in hand, a preliminary enquiry has been conducted and the enquiry officer, as already noticed, concluded that the alleged incident is in the realm of possibility. Though the enquiry is called by the respondents as a "preliminary" one, with the materials on record, the acceptability of the report to sustain the punishment of termination from service could be considered. This Court, while issuing Ext.P6 judgment, obviously acted so on the basis that the "appeal" of the petitioner would be considered. This means that the issue is to be considered by an authority higher than the authority that issued the order of termination. But what resulted is that the

same authority has treated that appeal as one for review and has decided the matter.

10. Having regard to the entire materials on record and the facts and circumstances of the case, including the version of the petitioner regarding the incident, which has not been held by the enquiry officer as impossible, it appears that ends of justice require that the entire case requires a second look at the hands of a higher authority. Such consideration should also include the question as to proportionality of punishment to be awarded. The balance has to be struck between the indisputable stand taken by the respondents that discipline in the institution is supreme, having regard to the nature of its activities, and any allowance of benefit that may have to go to the petitioner, while appreciating the entire facts of the case.

In the aforesaid circumstances, this writ petition is disposed of directing that the case of the petitioner would be considered by the SPORTS at its highest level, i.e., to say, the

Governing Council or the Board of the SPORTS, by treating Ext.P9 as an appeal to it against the decision contained in Ext.P8 issued by the Chairman of the Society. A final decision in that regard will be taken within an outer limit of four months from the date of receipt of a copy of this judgment, after affording the petitioner an opportunity of personal hearing.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.25698 OF 2000

JUDGMENT

23RD AUGUST, 2007.

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